

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

2014 JUN 20 P 4:49

John T. Smith,	)	No. 8:13-cv-1270-RMG
Plaintiff,	)	
v.	)	
Defendants.	)	

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**ORDER**

Tarcia Linnetta James, John B. McRee,  
Terry L. Andrews, James Parker, and  
Leroy Cartledge,

)  
Defendants.)

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that the Court grant Defendants’ motion for summary judgment. (Dkt. No. 70). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

**Background**

Plaintiff, a state prisoner proceeding pro se, brings this civil action pursuant to 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(d) DSC, this matter was automatically referred to a United States Magistrate Judge for pretrial proceedings. Defendants then filed a motion for summary judgment. (Dkt. No. 60). Plaintiff then filed a response opposing the motion, (Dkt. No. 64), and Defendants filed a reply, (Dkt. No. 66). The Magistrate Judge then issued the present R&R. (Dkt. No. 70). Plaintiff then filed objections, (Dkt. No. 72), and Defendants filed a reply, (Dkt. No. 74).

**Legal Standard**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with

this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

### **Discussion**

After review of the record, the R&R, and Plaintiff’s objections, the Court finds that the Magistrate Judge applied sound legal principles to the facts of this case and therefore agrees with and wholly adopts the R&R as the order of the Court. The Magistrate Judge ably summarized the applicable law and properly found that the evidence presented in this case fails to create a genuine issue of fact sufficient to survive summary judgment. Plaintiff’s objections mainly rehash arguments previously considered and correctly ruled upon by the Magistrate Judge. Particularly, Plaintiff urges his claim under the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213, but the Court agrees with the Magistrate Judge that Plaintiff has failed to demonstrate he was denied benefits of any program on the basis of an alleged disability. (Dkt. No. 70 at 12). Therefore, the Court agrees that Defendants’ motion for summary judgment must be granted.

### **Conclusion**

For the reasons set forth above, the Court agrees with and adopts the R&R of the Magistrate Judge as the order of the Court. (Dkt. No. 70). Accordingly, the Court grants Defendants’ motion for summary judgment. (Dkt. No. 60).

**AND IT IS SO ORDERED.**



Richard Mark Gergel  
United States District Court Judge

June 20, 2014  
Charleston, South Carolina